

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

DOUGLAS HANDSHOE	PLAINTIFF
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v.	Civil No. 1:15CV382-HSO-JCG
VAUGHN PERRET, <i>et al.</i>	DEFENDANTS
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**ORDER DISMISSING PLAINTIFF'S CLAIMS
AGAINST DEFENDANT DANIEL ABEL WITHOUT PREJUDICE**

This matter is before the Court upon its Order [89] entered on January 20, 2017, requiring Plaintiff Douglas Handshoe to properly serve all Defendants in the manner required by Federal Rule of Civil Procedure 4 and to file proper notice of said service by April 27, 2017. It does not appear that Plaintiff has served Defendant Daniel Abel with process, and Plaintiff has not sought additional time to serve Abel or shown good cause for his failure to serve Abel. After due consideration of the record and relevant legal authority, the Court finds that Plaintiff's claims against Abel should be dismissed without prejudice pursuant to Rule 4(m).

I. **BACKGROUND**

Plaintiff Douglas Handshoe ("Plaintiff") filed a pro se Civil Complaint for Damages, Declaratory, and Injunctive Relief [1] in this Court on November 16, 2015. Plaintiff has since filed three amended pleadings. The operative pleading is

the Third Amended Complaint [90]. Defendant Daniel Abel (“Abel”) has not appeared.

After Plaintiff filed his Second Amended Complaint [44] on June 17, 2016, he caused summonses to be issued as to Abel and other Defendants. On September 15, 2016, Plaintiff requested additional time to serve Abel, until December 15, 2016. Mot. [69] at 3. The Magistrate Judge granted Plaintiff’s Motion [69] in part and denied it in part and directed that Plaintiff properly serve Abel no later than October 18, 2016. Order [74] at 2. Plaintiff was warned that “[n]o further extensions for service of process will be granted absent a showing of extraordinary circumstances.” *Id.* (emphasis in original).

When Plaintiff did not file a proof of service as to Abel by the deadline, the Magistrate Judge entered an Order [81] to Show Cause why Abel should not be dismissed. Order [81] at 2. Plaintiff then filed a Motion for Leave to File Third Amended Complaint [82], which the Court granted. *See* Order [89] at 6-7. The Court’s Order [89], entered on January 20, 2017, stated that

Plaintiff Douglas Handshoe must serve all Defendants who have not appeared in this action with new summonses and his Third Amended Complaint, in the manner required by Federal Rule of Civil Procedure 4, and must file the proper proofs of service with the Clerk of Court, all by **April 27, 2017**. Plaintiff is warned that should he fail to properly serve any Defendant, and/or fail to file proper notice of said service by **April 27, 2017**, any unserved Defendant or Defendants may be dismissed without prejudice without further notice to Plaintiff, unless he is able to show good cause for such failure.

Id. at 7 (emphasis in original) (citing Fed. R. Civ. P. 4(m)).

On January 26, 2017, Plaintiff caused a summons to be issued as to Abel. Summons [91] at 1. Plaintiff has not returned any proof of service for this summons. Nor does the record contain any indication that Abel has been served with the Third Amended Complaint.

II. DISCUSSION

Federal Rule of Civil Procedure 4(m) provides in relevant part that

[i]f a defendant is not served within 90 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m).

The Court extended the time for Plaintiff to serve all Defendants, including Abel, who had not yet appeared in this action until April 27, 2017, and warned Plaintiff that any Defendant not served by that deadline may be dismissed without prejudice without further notice to him. Order [89] at 7. The April 27, 2017, deadline has long since passed, and there is no indication in the record that Abel has been served with the Third Amended Complaint. Plaintiff has not sought additional time to serve Abel and has not shown good cause for his failure to do so. The Court will dismiss Plaintiff's claims against Abel without prejudice pursuant to Rule 4(m).

III. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, Plaintiff's claims against Defendant Daniel Abel are **DISMISSED WITHOUT PREJUDICE**.
SO ORDERED AND ADJUDGED, this the 19th day of September, 2017.

Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE